IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2150 OF 2004

IN

SUIT NO.1720 OF 2004

A.N.Corporation Ltd. and another. .... Plaintiffs.

vs.

Raj Parashar Constructions Pvt.Ltd. & others. ... Defendants.

Mr.Sham Diwan i/b. Dhruve Liladhar & Co., for Plaintiffs.

Mr.E.P.Bharucha with Ms.P.S.Dwarkadas & Suresh Juneja i/b. M/s.Wadia Gandhy & Co. for Defendant nos.1,2,4 & 8 to 11.

CORAM: D.K.DESHMUKH,J.

DATED: 6th May,2005

P.C.:-

1. By present Notice of Motion, the plaintiffs claim appointment of receiver as also an order of temporary injunction in relation to the property which is described as “Jain property”. The plaintiffs claim that there was a joint venture in relation to this property. This claim is made according to the

plaintiffs on the basis of the document at Exhibit A. Perusal of that document however shows that the Jain property is not the property in relation to which there was a joint venture. Thus, the claim of the plaintiffs that there was a joint venture in relation to the Jain property between plaintiffs and defendants is not based on any document. It appears that the claim is really based on an oral agreement.

2. So far as the account books are concerned, it is pointed out by the learned Counsel for plaintiffs that in the defendant no.1's balancesheet for the year ending 31.3.2001, the plaintiff no.1 is shown as unsecured creditor and the loan amount is mentioned as Rs.1,28,00,000/- (Rupees One crore and Twenty Eight lakhs only). Though there is alternative prayer in the suit for money decree, the plaintiffs do not claim any order of attachment before judgment on the basis that plaintiffs' suit is for money decree. The claim of the plaintiffs for money decree is thus based on a document. But the interim reliefs claimed by this notice of motion are not relatable to the claim for money decree. They relate to the claim of the plaintiffs that there is a joint venture. Thus, the reliefs claimed by this Notice of Motion cannot be granted, because the claim is based on the alleged oral agreement which obviously will have to be established by the plaintiffs by leading oral evidence. At this stage, in the absence of any documentary evidence, it cannot be said that the plaintiffs have prima facie case for granting any interim relief in relation to the Jain property. Taking overall view of the matter therefore, no interim order can be made in favour of the

plaintiffs. Notice of Motion disposed of.